

114TH CONGRESS  
2D SESSION

# S. 3473

To increase outdated death gratuities and funeral allowances for Federal civilian employees killed in the line of duty, to expand the scope of eligible beneficiaries, to codify tax treatment, to change offset requirements, to harmonize death gratuities across Federal agencies, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

NOVEMBER 17, 2016

Ms. MIKULSKI (for herself, Mr. CARDIN, and Mr. WARNER) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To increase outdated death gratuities and funeral allowances for Federal civilian employees killed in the line of duty, to expand the scope of eligible beneficiaries, to codify tax treatment, to change offset requirements, to harmonize death gratuities across Federal agencies, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Death Gratuity Equity  
5       Act of 2016”.

1 SEC. 2. INCREASING THE DEATH GRATUITY FOR A FED-  
2 ERAL CIVILIAN EMPLOYEE KILLED IN THE  
3 LINE OF DUTY.

4       (a) AMENDMENT TO TITLE 5.—Subchapter VII of  
5 chapter 55 of title 5, United States Code, is amended by  
6 adding at the end the following:

11        "(a) DEFINITIONS.—In this section—

## 12                   “(1) the term ‘child’—

14 “(i) a natural child; and

16               “(B) does not include a stepchild who has  
17               not been adopted by the applicable civilian em-  
18               ployee; and

19               “(2) the term ‘civilian employee’ means an indi-  
20               vidual who the Secretary of Labor has determined is  
21               an employee, as defined in section 8101(1).

22        "(b) DEATH GRATUITY AUTHORIZED.—

“(1) IN GENERAL.—Notwithstanding section 8116, and in addition to any payment made under subchapter I of chapter 81, the head of an agency shall pay from appropriations made available for sal-

1       aries and expenses of that agency a death gratuity  
2       for the death of a civilian employee of that agency  
3       occurring on or after the date of enactment of this  
4       section if the death of the civilian employee—

5               “(A) resulted from an injury sustained in  
6       the line of duty; and

7               “(B) did not result from—

8                       “(i) natural causes; or

9                       “(ii) serious and willful misconduct by  
10       the civilian employee.

11               “(2) PAYMENT.—A death gratuity paid under  
12       paragraph (1) shall be—

13               “(A) in the amount described in subsection  
14       (c); and

15               “(B) paid to a person described in sub-  
16       section (d).

17               “(c) AMOUNTS AVAILABLE.—

18               “(1) IN GENERAL.—Except as provided in para-  
19       graph (2), the amount of a death gratuity paid  
20       under this section shall be—

21               “(A) \$100,000 per civilian employee; and

22               “(B) adjusted annually on March 1 of each  
23       year by the amount determined by the Sec-  
24       retary of Labor to represent the percentage dif-  
25       ference between the Consumer Price Index (all

1           items; United States city average) published for  
2           December of the preceding year and that price  
3           index published for the December of the year  
4           before the preceding year, adjusted to the near-  
5           est 1/10 of 1 percent.

6           “(2) LOCAL COMPENSATION PLAN.—The  
7           amount of a death gratuity paid in relation to the  
8           death of a civilian employee compensated under a  
9           local compensation plan established under section  
10          408 of the Foreign Service Act of 1980 (22 U.S.C.  
11          3968) shall be determined by regulations promul-  
12          gated by the Secretary of State.

13          “(d) EXECUTION OF PAYMENT.—

14          “(1) ESTABLISHMENT OF CLAIM.—Upon the  
15          establishment of a valid claim for a death gratuity  
16          under this section, payment shall be made—

17           “(A) to a person who—

18               “(i) survives a civilian employee on  
19               the date of the death of the civilian em-  
20               ployee; and

21               “(ii) is alive on the date that title to  
22               the payment arises; and

23               “(B) in the order of precedence established  
24               under paragraph (2).

1           “(2) ORDER OF PAYMENT.—The order of prece-  
2 dence established under this paragraph is as follows:

3           “(A)(i) To a beneficiary designated by the  
4 civilian employee in a signed and witnessed  
5 writing that—

6           “(I) is received by the agency employ-  
7 ing the civilian employee before the date of  
8 the death of the civilian employee; and

9           “(II) specifies that the beneficiary  
10 shall receive an amount payable under this  
11 section.

12           “(ii) A will or other document that is not  
13 executed and filed as described in clause (i)  
14 shall not constitute a writing under clause (i)  
15 and such a will or other document shall have no  
16 force or effect.

17           “(B) If there is no beneficiary designated  
18 under subparagraph (A), to the surviving  
19 spouse of the civilian employee.

20           “(C) If subparagraphs (A) and (B) do not  
21 apply, to—

22           “(i) the child or children of the civil-  
23 ian employee; and

1                     “(ii) any descendants of a deceased  
2                     child or children of the civilian employee by  
3                     representation.

4                     “(D) If subparagraphs (A), (B), and (C)  
5                     do not apply, to the surviving parent or parents  
6                     of the civilian employee.

7                     “(E) If subparagraphs (A) through (D) do  
8                     not apply, to the duly appointed executor or ad-  
9                     ministrator of the estate of the civilian em-  
10                     ployee.

11                     “(F) If subparagraphs (A) through (E) do  
12                     not apply, to the person entitled to the payment  
13                     under the laws of the domicile of the civilian  
14                     employee on the date of the death of the civilian  
15                     employee.

16                     “(e) PAYMENT NOT GROSS INCOME.—A payment  
17                     under this section shall not be considered gross income  
18                     of a person described in subsection (d)(2) under section  
19                     61 of the Internal Revenue Code of 1986.”.

20                     (b) AMENDMENTS TO TITLE 49.—Section  
21                     40122(g)(2) of title 49, United States Code, is amended—  
22                         (1) by redesignating subparagraphs (C) through  
23                         (J) as subparagraphs (D) through (K), respectively;  
24                         and

1                             (2) by inserting after subparagraph (B) the fol-  
 2                             lowing:

3                             “(C) section 5571, relating to a death gra-  
 4                             tuity resulting from an injury sustained in the  
 5                             line of duty;”.

6                             (c) TECHNICAL AND CONFORMING AMENDMENTS.—

7                             Chapter 55 of title 5, United States Code, is amended—  
 8                             (1) in the heading for subchapter VII, by strik-  
 9                             ing “EMPLOYEES” and inserting “PERSONS  
 10                             AND PAYMENTS FOR DISABILITY OR  
 11                             DEATH”; and

12                             (2) in the table of sections—

13                             (A) by striking the item relating to sub-  
 14                             chapter VII and inserting the following:

“SUBCHAPTER VII—PAYMENTS TO MISSING PERSONS AND PAYMENTS FOR  
 DISABILITY OR DEATH”;

15                             and

16                             (B) by inserting after the item relating to  
 17                             section 5570 the following:

“5571. Certain employee death gratuities payable by reason of death of a Fed-  
 eral civilian employee resulting from an injury sustained in the  
 line of duty.”.

18                             **SEC. 3. REPEAL OF 1996 DEATH GRATUITY PAYMENT AU-**  
 19                             **THORITY.**

20                             Section 651 of the Treasury, Postal Service, and  
 21                             General Government Appropriations Act, 1997 (5 U.S.C.  
 22                             8133 note; Public Law 104–208) is repealed.

## **1 SEC. 4. FUNERAL AND BURIAL EXPENSES.**

2       (a) IN GENERAL.—Section 8134 of title 5, United  
3 States Code, is amended by striking subsection (a) and  
4 inserting the following:

5       “(a)(1) For deaths occurring on or after the date of  
6 enactment of the Death Gratuity Equity Act of 2016, if  
7 death results from an injury sustained in the performance  
8 of duty, the United States shall pay, to the personal rep-  
9 resentative of the deceased or otherwise, funeral and bur-  
10 ial expenses not to exceed \$8,800, in the discretion of the  
11 Secretary of Labor.

12       “(2) The maximum payment permitted under para-  
13 graph (1) shall be adjusted annually on March 1 of each  
14 year in accordance with the adjustment described in sec-  
15 tion 8146a.”.

16       (b) APPLICABILITY.—Section 8134(a) of title 5,  
17 United States Code, as in effect on the day before the date  
18 of enactment of this Act, shall apply to a death occurring  
19 before the date of enactment of this Act without regard  
20 to whether payment is made before, on, or after the date  
21 of enactment of this Act.

22 SEC. 5. FEDERAL EMPLOYEES' COMPENSATION ACT DEATH  
23 GRATUITY.

24 (a) IN GENERAL.—Section 8102a of title 5, United  
25 States Code, is amended—

1                             (1) by striking subsection (a) and inserting the  
2                             following:

3                         “(a) DEATH GRATUITY AUTHORIZED.—

4                         “(1) IN GENERAL.—

5                         “(A) PAYMENT.—Except as provided in  
6                             paragraph (2), for deaths occurring on or after  
7                             the date of enactment of the Death Gratuity  
8                             Equity Act of 2016, the United States shall pay  
9                             a death gratuity of \$100,000 to or for the eligi-  
10                          ble survivor under subsection (d) immediately  
11                          upon receiving official notification of the death  
12                          of an employee who dies of injuries incurred in  
13                          connection with the service of that employee  
14                          with an Armed Force in a contingency oper-  
15                          ation.

16                         “(B) ADJUSTMENT.—The amount under  
17                           subparagraph (A) shall be adjusted annually on  
18                          March 1 of each year by the amount deter-  
19                          mined by the Secretary of Labor to represent  
20                          the percentage difference between the Con-  
21                          sumer Price Index (all items; United States city  
22                          average) published for December of the pre-  
23                          ceding year and that price index published for  
24                          the December of the year before the preceding  
25                          year, adjusted to the nearest  $\frac{1}{10}$  of 1 percent.

1                 “(C) NO REDUCTION.—The death gratuity  
2                 payable under subparagraph (A) shall not be  
3                 reduced by the amount of any other death gra-  
4                 tuity provided under any other law of the  
5                 United States that is based on the same death.

6                 “(2) COMPENSATION FOR NONCITIZENS AND  
7                 NONRESIDENTS.—For claims arising under section  
8                 8137, the amount of the death gratuity shall be sub-  
9                 ject to that section and the regulations promulgated  
10                 under that section.”;

11                 (2) by striking subsection (c);  
12                 (3) by redesignating subsections (d) and (e) as  
13                 subsections (c) and (d), respectively; and  
14                 (4) in subsection (c), as so redesignated, by  
15                 adding at the end the following:

16                 “(7) If there are no eligible survivors, as de-  
17                 scribed in paragraphs (1) through (6), and the em-  
18                 ployee has not designated another person to receive  
19                 an amount payable under this section, that amount  
20                 shall be paid to the personal representative of the es-  
21                 tate of the employee.”.

22                 (b) APPLICABILITY.—Section 8102a of title 5, United  
23                 States Code, as in effect on the day before the date of  
24                 enactment of this Act, shall apply to a death occurring  
25                 before the date of enactment of this Act without regard

1 to whether payment is made before, on, or after the date  
2 of enactment of this Act.

3 **SEC. 6. AGENCY GRATUITY FOR DEATHS SUSTAINED IN**  
4 **THE PERFORMANCE OF DUTY ABROAD.**

5 Section 413 of the Foreign Service Act of 1980 (22  
6 U.S.C. 3973) is amended—

7 (1) in subsection (a)—

8 (A) in the first sentence, by striking “de-  
9 pendents” and inserting “beneficiary”; and

10 (B) in the second sentence, by inserting “,  
11 except as provided in subsection (e)” after  
12 “payable from any source”;

13 (2) by amending subsection (b) to read as fol-  
14 lows:

15 “(b) EXECUTIVE AGENCIES.—The head of an execu-  
16 tive agency shall, pursuant to guidance issued under sub-  
17 section (c), make a death gratuity payment authorized by  
18 this section to the surviving beneficiary of—

19 (1) any employee of that agency who dies as  
20 a result of injuries sustained in the performance of  
21 duty abroad while subject to the authority of the  
22 chief of mission pursuant to section 207; or

23 (2) an individual in a special category serving  
24 in an uncompensated capacity for that agency  
25 abroad in support of a diplomatic mission, as identi-

1 fied in guidance issued under subsection (c), who  
2 dies as a result of injuries sustained in the perform-  
3 ance of duty abroad.”;

4 (3) by amending subsection (d) to read as fol-  
5 lows:

6 “(d) ELIGIBILITY UNDER CHAPTER 81 OF TITLE 5,  
7 UNITED STATES CODE.—A death gratuity payment may  
8 be made under this section only if the death is determined  
9 by the Secretary of Labor to have resulted from an injury  
10 (excluding a disease proximately caused by the employ-  
11 ment) sustained in the performance of duty under section  
12 8102 of title 5, United States Code.”;

13 (4) by redesignating subsection (e) as sub-  
14 section (g);

15 (5) by inserting after subsection (d) the fol-  
16 lowing:

17 “(e) OFFSET.—For deaths occurring on or after the  
18 date of enactment of this subsection, the death gratuity  
19 payable under this section shall be reduced by the amount  
20 of any death gratuity provided under section 5571 of title  
21 5, United States Code, based on the same death.

22 “(f) TAX TREATMENT.—A payment under this sec-  
23 tion shall not be considered gross income of a surviving  
24 beneficiary under section 61 of the Internal Revenue Code  
25 of 1986.”; and

1                             (6) in subsection (g), as so redesignated, by  
2 amending paragraph (2) to read as follows:

3                             “(2) the term ‘surviving beneficiary’ means the  
4 person identified under the order of precedence es-  
5 tablished under section 5571(d)(2) of title 5, United  
6 States Code.”.

7 **SEC. 7. EMERGENCY SUPPLEMENTAL AUTHORIZATION IN**  
8                             **THE EVENT OF THE INABILITY OF AN AGEN-**  
9                             **CY TO MEET THE REQUIREMENTS OF THIS**  
10                           **ACT.**

11                         (a) IN GENERAL.—If the head of an agency (as de-  
12 fined in section 5561 of title 5, United States Code) deter-  
13 mines, with the concurrence of the Director of the Office  
14 of Management and Budget, that a natural disaster, act  
15 of terrorism, or other incident results in the inability of  
16 the agency to meet the requirements of this Act and the  
17 amendments made by this Act, additional amounts are au-  
18 thorized to be appropriated to make additional pay-  
19 ments—

20                         (1) under—

21                             (A) section 5571(b) of title 5, United  
22 States Code, as added by section 2(a);  
23                             (B) section 8102a of title 5, United States  
24 Code, as amended by section 5; and

(b) ADDITIONAL PAYMENTS.—A payment authorized under subsection (a) may be made only if additional appropriations are provided for a purpose described in that subsection.

10 (c) CONGRESSIONAL VOTE.—It is the sense of Con-  
11 gress that Congress should vote on a request for additional  
12 appropriations under this section not later than 30 days  
13 after the date of submission of such a request to Congress.

